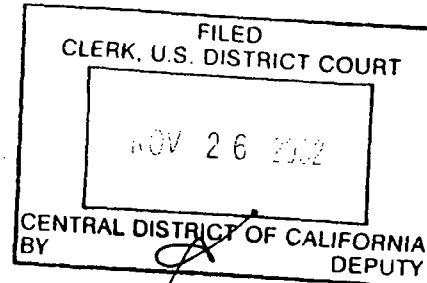
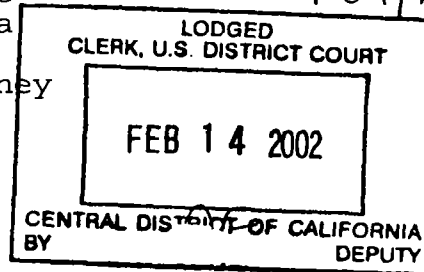


SFUND RECORDS CTR
2244325

THOMAS L. SANSONETTI
Assistant Attorney General
Environmental and Natural Resources Division
BRADLEY R. O'BRIEN, State Bar No. 189425
United States Department of Justice
301 Howard Street, Suite 1050
San Francisco, CA 94105
Telephone (415) 744-6484/Fac. (415) 744-6476



JOHN S. GORDON
United States Attorney for the
Central District of California
SUZETTE CLOVER
Assistant United States Attorney
300 North Los Angeles Street
Los Angeles, CA 90012
Telephone (213) 894-7373



NANCY J. MARVEL
Regional Counsel
MARIE RONGONE
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105

Attorneys for Plaintiff United States

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,) CIV. NO. CV 97-9449 CAS (RZx)
)
v.)
)
KENNETH HUNTER, JR., et al.,) UNITED STATES' NOTICE OF
) LODGING (CONSENT DECREE)
)
Defendants.)

CASMALIA RESOURCES SITE)
STEERING COMMITTEE,) CIV. NO. CV 98-0074 CAS (RZx)
)
Plaintiff,)
)
v.)
)
KENNETH HUNTER, JR., et al.,)
)
Defendants.)

I HEREBY CERTIFY THAT THIS DOCUMENT WAS SERVED BY
FIRST CLASS MAIL, POSTAGE PREPAID, TO ALL COUNSEL
(OR PARTIES) AT THEIR RESPECTIVE MOST RECENT ADDRESS OF
RECORD IN THIS ACTION ON THIS DATE

CDM186097

DATED

11-26-02
A. Williams

1		
2	I. <u>BACKGROUND</u>	1
3	II. <u>JURISDICTION</u>	4
4	III. <u>PARTIES BOUND</u>	4
5	IV. <u>DEFINITIONS</u>	5
6	V. <u>PAYMENT OF RESPONSE COSTS AND OTHER REQUIREMENTS</u>	
7	10
8	VI. <u>FAILURE TO COMPLY WITH REQUIREMENTS OF CONSENT</u>	
9	<u>DECREE</u>	17
10	VII. <u>COVENANT NOT TO SUE BY PLAINTIFF</u>	21
11	VIII. <u>COVENANT NOT TO SUE BY SETTLING PARTIES</u>	26
12	IX. <u>EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION</u>	30
13	X. <u>SITE, FFA AND PROPERTY ACCESS</u>	32
14	XI. <u>ACCESS TO INFORMATION</u>	38
15	XII. <u>RETENTION OF RECORDS</u>	41
16	XIII. <u>NOTICES AND SUBMISSIONS</u>	45
17	XIV. <u>RETENTION OF JURISDICTION</u>	46
18	XV. <u>INTEGRATION/APPENDICES</u>	46
19	XVI. <u>LODGING AND OPPORTUNITY FOR PUBLIC COMMENT</u>	47
20	XVII. <u>EFFECTIVE DATE</u>	47
21	XVIII. <u>SIGNATORIES/SERVICE</u>	48
22		
23		
24		
25		
26		
27		
28		

1
2 I. BACKGROUND

3 A. The United States of America ("United
4 States"), on behalf of the Administrator of the United
5 States Environmental Protection Agency ("EPA"), filed
6 a complaint in this matter against Settling
7 Defendants, as defined in Section IV of this Consent
8 Decree, pursuant to Section 107 of the Comprehensive
9 Environmental Response, Compensation, and Liability
10 Act of 1980, 42 U.S.C. § 9607, as amended ("CERCLA"),
11 on December 23, 1997. The complaint sought
12 reimbursement of response costs incurred and to be
13 incurred for response actions taken at or in
14 connection with the release or threatened release of
15 hazardous substances at the Casmalia Resources
16 Superfund Site in Santa Barbara County, California
17 (hereinafter "the Site"), and other relief.

18 B. The United States, on behalf of EPA, also
19 filed a complaint pursuant to Section 107 of CERCLA
20 against the members of the Casmalia Resources Site
21 Steering Committee ("CSC") on September 17, 1996,
22 captioned *United States v. ABB Vetco Gray, Inc. et*
23 *al.*, Civ. No. 96-6518 KMW (Jgx), seeking response
24 costs in connection with the Site, and other
25 injunctive relief.

26 C. The CSC filed its complaint against the
27 Settling Defendants on January 6, 1998, seeking
28

1 contribution for response costs incurred and to be
2 incurred in connection with the Site, and other
3 relief, pursuant to CERCLA and common law.

4 D. The United States has obtained partial summary
5 judgment against Settling Defendants Casmalia
6 Resources and Hunter Resources. With the approval of
7 the Court, the United States, the Settling Parties and
8 the CSC have engaged in extensive mediation to resolve
9 this action under the guidance of the Hon. Eugene F.
10 Lynch, federal district court judge, Ret.

11 E. The Settling Parties, as defined in Section IV
12 of this Consent Decree, do not admit any liability to
13 Plaintiff or any other person arising out of the
14 transactions or occurrences alleged in the complaints.

15 F. The successor trustee of the trust identified
16 below has informed the United States that, except for
17 the shares of Hunter Resources, and the shares of NTU
18 Corp., the funds to be paid to the United States
19 pursuant to Paragraph 4 of this Consent Decree and to
20 guarantee compliance with the other requirements of
21 this Consent Decree, the assets formerly held in the
22 Kenneth H. Hunter, Jr. Living Trust, dated October 19,
23 1990 ("the Hunter Living Trust") have been distributed
24 in accordance with the terms of the Hunter Living
25 Trust. The United States has not determined that this
26 information affects the liability of any person in

1 this action.

2 G. On June 27, 1997, a consent decree that
3 resolved certain claims between EPA and the CSC was
4 entered by the United States District Court for the
5 Central District of California in *United States v. ABB*
6 *Vetco Gray, Inc., et al.*, Civ. No. 96-6518 KMW(JGx)
7 ("Casmalia Consent Decree"). Under the Casmalia
8 Consent Decree, the CSC agreed to perform certain work
9 with its own funds and with funds from third parties.
10 The Casmalia Consent Decree requires EPA and the CSC
11 to deposit monetary recoveries received from third
12 parties, including the Settling Defendants, into the
13 Escrow Account, as defined in Section IV of this
14 Consent Decree, for distribution according to the
15 priorities set forth in the Casmalia Consent Decree.
16 This Consent Decree is not intended to amend or
17 supercede the Casmalia Consent Decree, or to violate
18 the rights afforded to any party to the Casmalia
19 Consent Decree.

20 H. The United States and Settling Parties agree,
21 and this Court by entering this Consent Decree finds,
22 that this Consent Decree has been negotiated by the
23 Parties in good faith, that settlement of this matter
24 will avoid further prolonged and complicated
25 litigation between the Parties, and that this Consent
26 Decree is fair, reasonable, and in the public

27

28

1 interest.

2 THEREFORE, with the consent of the Settling
3 Parties, it is ORDERED, ADJUDGED, AND DECREED:

4 **II. JURISDICTION**

5 1. This Court has jurisdiction over the subject
6 matter of this action pursuant to 28 U.S.C. §§ 1331
7 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also
8 has personal jurisdiction over Settling Parties.
9 Settling Parties consent to and shall not challenge
10 entry of this Consent Decree or this Court's
11 jurisdiction to enter and enforce this Consent Decree.

12 **III. PARTIES BOUND**

13 2. This Consent Decree is binding upon the United
14 States and upon Settling Parties and their heirs,
15 successors and assigns. Any change in ownership or
16 corporate or other legal status, including but not
17 limited to, any transfer of assets or real or personal
18 property, shall in no way alter the status or
19 responsibilities of Settling Parties under this
20 Consent Decree.

1 IV. DEFINITIONS

2 3. Unless otherwise expressly provided herein,
3 terms used in this Consent Decree that are defined in
4 CERCLA or in regulations promulgated under CERCLA
5 shall have the meaning assigned to them in CERCLA or
6 in such regulations. Whenever terms listed below are
7 used in this Consent Decree or in any appendix
8 attached hereto, the following definitions shall
9 apply:

10 a. "30 Day Period" shall mean the period within
11 thirty (30) days of entry of this Consent Decree.

12 b. "Beneficiaries" shall mean the following
13 individuals in their capacities as beneficiaries of
14 the Hunter Living Trust and as heirs, successors,
15 donees and/or surviving joint tenants of Kenneth H.
16 Hunter, Jr., deceased, and/or his property: Alexis
17 Chernow, Francesca Hunter, Kenneth H. Hunter, III,
18 Nancy Hunter, Sally Hunter, and Katherine Kramer.

19 c. "CERCLA" shall mean the Comprehensive
20 Environmental Response, Compensation, and Liability
21 Act of 1980, as amended, 42 U.S.C. § 9601, et seq.

22 d. "Consent Decree" shall mean this Consent
23 Decree and all appendices attached hereto. In the
24 event of conflict between this Consent Decree and any
25 appendix, this Consent Decree shall control.

1 e. "Casmalia Consent Decree" shall mean the
2 consent decree between the United States and the
3 Casmalia Steering Committee entered by the United
4 States District Court for the Central District of
5 California on June 27, 1997 in *United States v. ABB*
6 *Vetco Gray, Inc., et al.*, Civ. No. 96-6518 KMW(JGx).

7 f. "Day" shall mean a calendar day. In computing
8 any period of time under this Consent Decree, where
9 the last day would fall on a Saturday, Sunday, or
10 federal holiday, the period shall run until the close
11 of business of the next working day.

12 g. "DOJ" shall mean the United States Department
13 of Justice and any successor departments, agencies or
14 instrumentalities.

15 h. "Escrow Account" shall mean the escrow account
16 for the Site, which was established pursuant to the
17 Casmalia Consent Decree.

18 i. "EPA" shall mean the United States
19 Environmental Protection Agency and any successor
20 departments, agencies or instrumentalities.

21 j. "EPA Hazardous Substance Superfund" shall mean
22 the Hazardous Substance Superfund established by the
23 Internal Revenue Code, 26 U.S.C. § 9507.

24 k. "Facility" shall mean the Casmalia Resources
25 Disposal Site, encompassing approximately 252 acres,
26 located in Santa Barbara County, California, as
27

28

1 depicted more clearly in Appendix B to this Consent
2 Decree and on the map included within Appendix B to
3 this Consent Decree.

4 1. "Facility Fringe Area" or "FFA" shall mean
5 the property that immediately surrounds the Facility,
6 as more particularly described in Appendix C to this
7 Consent Decree and on the map included within Appendix
8 C to this Consent Decree.

9 m. "Interest Rate I" shall mean interest at the
10 rate specified on October 1, 2001 for interest on
11 investments of the Hazardous Substance Superfund
12 established by 26 U.S.C. § 9507, compounded annually
13 on October 1 of each year, in accordance with 42
14 U.S.C. § 9607(a). Interest Rate I has been
15 established as 3.35% per annum.

16 n. "Interest Rate II" shall mean interest at the
17 then-current rate for interest on investments of the
18 Hazardous Substance Superfund established by 26 U.S.C.
19 § 9507, compounded annually on October 1 of each year,
20 in accordance with 42 U.S.C. § 9607(a).

21 o. "Owner Settling Defendant" shall mean Casmalia
22 Resources and any successor entity to Casmalia
23 Resources.

24 p. "Paragraph" shall mean a portion of this
25 Consent Decree identified by an arabic numeral or an
26 upper or lower case letter.

1 q. "Parties" shall mean the United States and the
2 Settling Parties.

3 r. "Plaintiff" shall mean the United States.

4 s. "Property" shall mean the property owned by
5 Casmalia Resources comprising approximately 3800 acres
6 in Santa Barbara County, California, in the near
7 vicinity of the Facility, which is more particularly
8 described in and Appendix A and on the map included
9 within Appendix A. The Property does not include the
10 Facility or the Facility Fringe Area, as defined in
11 this Section.

12 t. "Record of Decision" or "ROD" shall mean any
13 EPA Record of Decision relating to the Facility. No
14 ROD for the Site has been signed by the Regional
15 Administrator, EPA Region 9, or his/her delegatee, at
16 the time of lodging of this Consent Decree.

17 u. "Remedial Action" shall mean those activities,
18 except for Operation and Maintenance, to be undertaken
19 to implement a ROD for the Facility.

20 v. "Response Costs" shall mean all costs,
21 including but not limited to direct and indirect
22 costs, that EPA or DOJ on behalf of EPA or any other
23 person or entity has incurred or paid or will incur or
24 pay at or in connection with the Facility, plus
25 accrued Interest on all such costs.

26 w. "Section" shall mean a portion of this Consent
27

1 Decree identified by a roman numeral.

2 x. "Settling Defendants" shall mean Casmalia
3 Resources, Hunter Resources and the trustee of the
4 Hunter Living Trust, in his capacity as trustee.

5 y. "Settling Parties" shall mean Casmalia
6 Resources, Hunter Resources, the trustee of the Hunter
7 Living Trust, in his capacity as trustee, and the
8 Beneficiaries, as defined in this Section.

9 z. "Site" shall mean the Casmalia Resources
10 Superfund Site, encompassing approximately 252 acres,
11 located in Santa Barbara County, California, as
12 depicted more clearly in Appendix B to this Consent
13 Decree and on the map included within Appendix B to
14 this Consent Decree, together with the areal extent of
15 contamination that is presently located in the vicinity of the
16 Facility and all suitable areas in very close proximity to the
17 contamination necessary for the implementation of the response
18 action and any areas to which such contamination migrates.

19 aa. "Title Commitment" shall mean the Pro Forma
20 Title Commitment dated September 26, 2001, issued by
21 Lawyer's Title Company, a copy of which is attached as
22 Appendix D to this Consent Decree.

23 ab. "United States" shall mean the United States
24 of America, including its departments, agencies and
25 instrumentalities.

26 V. PAYMENT OF RESPONSE COSTS AND OTHER REQUIREMENTS

27

28

1

2

27

1 entry of this Consent Decree, Settling Defendants
2 shall cause the Fixed Amount and all interest accrued
3 thereon pursuant to this Consent Decree to be
4 transferred from the Trust Account to the Escrow
5 Account, in accordance with instructions approved by
6 EPA. Although this Consent Decree is not intended to
7 amend or supercede the Casmalia Consent Decree, in the
8 event the Casmalia Consent Decree is declared invalid,
9 is no longer in force, is otherwise superceded, or
10 otherwise determined not to be binding upon the United
11 States by the Court prior to the time Settling
12 Defendants are required to make payment to the Escrow
13 Account, Settling Defendants shall remit payment to an
14 alternate account that will be specified in the future
15 by the United States.

16 (b) Payment shall be made by wire transfer
17 to:

18 Banker's Trust Co.
19 c/o Mr. Thomas Hacker
20 4 Albany Street
21 New York, NY 10006
22 ABA/Locator #: 021-001-033
Acct. #: 01-419-647
REF: Casmalia Resources Site Custodial
Agreement
Payors: e.g. Casmalia Resources

23 Payment shall reference the Settling Parties' names
24 precisely. Any payments received by the Escrow
25 Account after 5:00 p.m. Pacific Daylight Time shall be
26 credited on the next business day. At the time of

27

28

1 payment, Settling Defendants shall submit a copy of
2 the completed Payment Invoice in accordance with
3 Section XI (Notices and Submissions). Payment
4 instructions are attached hereto as Appendix E, and a
5 Payment Invoice Form is attached hereto as Appendix F.

6 5. Closure/Post-Closure Fund Disposition. As
7 additional consideration, the Settling Parties hereby
8 relinquish any claim, right or title to the Casmalia
9 Resources Hazardous Waste Management Facility
10 Closure/Post-Closure Fund, EPA ID #CAD 02 748 125,
11 account no. MBT 7401-00 ("the Closure/Post-Closure
12 Fund") and any funds that are or have been in the
13 Closure/Post-Closure Fund, which shall be and has been
14 used to conduct response actions at or in connection
15 with the Site. The value of the Closure/Post-Closure
16 Fund, as of September 30, 2001, was \$ 13,410,649
17 exclusive of any earlier withdrawals. The United
18 States has previously accessed \$ 1,419,008.77 from the
19 Closure/Post-Closure Fund to perform response actions
20 at the Site.

21 6. By signing this Consent Decree, Settling
22 Defendants certify, and the United States relies on
23 such certification, that except for the Facility, the
24 Property and the Facility Fringe Area, Casmalia
25 Resources and Hunter Resources have owned no other
26 real property since the commencement of this action,

27

28

1 except a property owned by Hunter Resources, which
2 consists of approximately 120 acres of land situated
3 in the Santa Clarita River riverbed, which Hunter
4 Resources has represented to the United States is of
5 nominal value. In accordance with the Covenant,
6 Irrevocable Option Agreement, Environmental
7 Restrictions and Joint Escrow Agreement ("Option
8 Agreement") attached to this Consent Decree as
9 Appendix H and as otherwise provided in this Consent
10 Decree, Settling Defendants shall, for the period of
11 10 (ten) years after entry of this Consent Decree
12 ("the Option Period"), transfer to a United States
13 designee all or a portion of the Property and/or the
14 Facility Fringe Area, at the United States' option.

15 7.

16 a. Owner Settling Defendant shall establish an
17 escrow agency with a competent financial institution
18 (the "Escrow Agent"), to the satisfaction of the
19 United States, pursuant to which the Escrow Agent
20 shall be designated to pay property taxes for the
21 Property, and perform other escrow management
22 activities related to the Property and/or the FFA, all
23 in accordance with the terms and conditions of an
24 Escrow Agency Agreement in substantially the form set
25 forth as Appendix G to this Consent Decree. The
26 Escrow Agency Agreement is for the benefit of EPA to
27
28

1 act as collateral to assure payment and performance of
2 items covered by the Escrow Agency Agreement. The
3 Escrow Agency Agreement shall provide, inter alia, a
4 guaranty arrangement to assure that real property
5 taxes on the Property are paid during the Option
6 Period. Notwithstanding the creation or existence of
7 the Escrow Agency Agreement, the obligation to pay any
8 taxes on the Property and to discharge any and all
9 obligations of this Consent Decree shall remain the
10 obligation of the Settling Defendants.

11 b. Owner Settling Defendant shall designate
12 a contact person generally knowledgeable about the
13 Property ("Contact Person"). The Contact person shall
14 be available to be contacted for information by the
15 EPA or by third persons seeking contact with the owner
16 of the Property, the FFA or the Facility, and to be
17 utilized by the EPA for certain limited activities.
18 The Contact Person shall be so available for a ten-
19 year period after entry of this Consent Decree subject
20 to the following limitations: the Contact Person
21 shall not be required pursuant to this Consent Decree
22 to be available more than 10 (ten) hours per month;
23 100 (one hundred) hours per year and 500 (five
24 hundred) hours in the aggregate for the entire ten-
25 year period. The limited activities to be performed
26 by the Contact Person, in addition to availability for
27

1 information, shall include creating fire breaks and
2 other similar or routine tasks to comply with local or
3 other governmental laws and regulations. Nothing in
4 this Consent Decree shall be deemed to impose any
5 obligations of Owner Settling Defendant upon EPA or
6 the United States, to comply with laws and regulations
7 or otherwise, or to carry out any of the activities of
8 this subparagraph b.

9 c. Settling Parties shall not remove from
10 the Facility, the Property or the FFA any fixtures,
11 appurtenances, equipment or other items, including but
12 not limited to pumps, pipelines, water tanks, fences,
13 buildings or any other improvements, without the prior
14 approval of EPA in its unreviewable discretion.

15 8. (a) During the Option Period, Settling
16 Defendants shall

17 (i) arrange for the payment of any
18 back taxes on the Property to the satisfaction of the
19 United States, and shall, prior to the delinquency
20 date, arrange for the payment of taxes due on the
21 Property during the Option Period;

22 (ii) deliver, at the United States'
23 option, free of charge and immediately upon the United
24 States' request, title to the Property and/or the FFA
25 to the United States or a United States designee,
26 subject only to the exceptions described in the Title
27

1 Commitment, Appendix D to this Consent Decree. Until
2 such request to deliver title is made and title to all
3 or a portion of the Property and/or the FFA is
4 transferred to the United States or a United States
5 designee, Owner Settling Defendant shall retain title
6 to the Property and the FFA during the Option Period;
7 and shall pay taxes on the Property during the Option
8 Period. If the United States takes title to a
9 portion, but not all of the Property, Owner Settling
10 Defendant shall continue to retain title to and pay
11 taxes for the remaining portion of the Property during
12 the Option Period. Such taxes may be paid through the
13 Escrow Agent.

14 (b) Grazing or farming activities permitted
15 by the Land Lease ("Lease") attached as Appendix I to
16 this Consent Decree may be conducted on the Property
17 up to and including December 31, 2002. All grazing or
18 other activities pursuant to the Lease shall cease no
19 later than December 31, 2002. No other farming,
20 grazing or other commercial activities may be
21 conducted on the Property, the FFA or the Facility by
22 Settling Parties without approval by EPA in its
23 unreviewable discretion.

24 VI. FAILURE TO COMPLY WITH REQUIREMENTS OF CONSENT
25 DECREE

26 9. Interest on Late Payments. In the event that
27

1 any payments required by Section V (Payment of
2 Response Costs and Other Requirements) or Section VI,
3 Paragraph 10 (Stipulated Penalty), are not received
4 when due, Interest shall continue to accrue on the
5 unpaid balance through the date of payment.

6 10. Stipulated Penalty.

7 a. If the payment required by Paragraph 4.a
8 of this Consent Decree is not paid in accordance with
9 this Consent Decree, Settling Parties shall pay to EPA
10 as a stipulated penalty, in addition to the applicable
11 Interest Rate I or II, \$ 2000 (two thousand dollars)
12 per violation per day that such payment is late or
13 such obligation is not performed, for the first thirty
14 (30) days of such violation, \$ 5000 (five thousand
15 dollars) per violation per day for the following sixty
16 (60) days, and \$ 27,500 (twenty-seven thousand, five
17 hundred dollars) per day for each day thereafter. If
18 Settling Defendants fail to make any other payments
19 required by this Consent Decree or to perform any
20 other requirement of Section V of this Consent Decree
21 (Payment of Response Costs and Other Requirements),
22 Section X (Site and Property Access), Section XI
23 (Access to Information), or other provisions of this
24 Consent Decree, Settling Defendants shall pay to EPA,
25 as a stipulated penalty, \$ 1000 (one thousand dollars)
26 per violation per day of such noncompliance for the
27
28

1 first five (5) days of such violation, \$ 10,000 (ten
2 thousand dollars) per violation per day of such
3 violation for the sixth through thirtieth days, and
4 \$ 27,500 (twenty-seven thousand, five hundred dollars)
5 per violation per day for each day thereafter.

6 b. Stipulated penalties are due and payable
7 within 30 (thirty) days of the date of the demand for
8 payment of the penalties by EPA.

9 c. All penalties payable to the United
10 States under this Section shall be paid by certified
11 or cashier's check(s) made payable to "EPA Hazardous
12 Substances Superfund," and shall be mailed to

13 U.S. Environmental Protection Agency
14 Region IX, Attn: Superfund Accounting
P.O. Box 360863M
15 Pittsburgh, PA 15251

16 The transmittal shall indicate that the payment is for
17 stipulated penalties, and shall reference the EPA
18 Region and Site/Spill ID #09GW, the DOJ Case Number
19 90-7-1-611D, and the name and address of the party
20 making payment. Copies of check(s) paid pursuant to
21 this Section, and any accompanying transmittal
22 letter(s), shall be sent to the United States as
23 provided in Section XIII (Notices and Submissions).

24 c. Penalties shall accrue as provided in
25 this Paragraph regardless of whether EPA has notified
26 Settling Parties or any of them of the violation or
27 made a demand for payment, but need only be paid upon

1 demand. All penalties shall begin to accrue on the
2 day after complete performance is due or the day a
3 violation occurs, and shall continue to accrue through
4 the final day of correction of the noncompliance or
5 completion of the activity. Nothing herein shall
6 prevent the simultaneous accrual of separate penalties
7 for separate violations of this Consent Decree.

8 11. If the United States brings an action to
9 enforce this Consent Decree, Settling Parties against
10 whom enforcement is sought shall reimburse the United
11 States for all direct and indirect costs of such
12 action, including but not limited to costs of attorney
13 time, provided that the United States prevails
14 substantially in the action.

15 12. Payments made under Paragraphs 10-11 of this
16 Consent Decree shall be in addition to any other
17 remedies or sanctions available to Plaintiff by virtue
18 of Settling Parties' failure to comply with the
19 requirements of this Consent Decree.

20 13.

21 i. The obligations of Settling Parties to
22 pay the amount required by Paragraph 4.a under this
23 Consent Decree are joint and several. The obligations
24 to make other payments and to perform the actions
25 required under this Consent Decree are joint and
26 several among the Settling Defendants. In the event
27
28

1 of the failure of any one or more of the Settling
2 Parties to make the payments required by Paragraph
3 4.a, the remaining Settling Parties shall be
4 responsible for such payments or performance. In the
5 event of the failure of any one or more of the
6 Settling Defendants to make other payments or to
7 perform the actions required under this Consent
8 Decree, the remaining Settling Defendants shall be
9 responsible for such performance.

10 ii. Kenneth H. Hunter III, as the trustee of
11 the Hunter Living Trust, is executing this Consent
12 Decree in his capacity as trustee and not
13 individually. The Parties expressly acknowledge that
14 Kenneth H. Hunter III is not assuming any personal
15 liability by executing this Consent Decree as trustee
16 of the Hunter Living Trust.

17 14. Notwithstanding any other provision of this
18 Section, the United States may, in its unreviewable
19 discretion, waive payment of any portion of the
20 stipulated penalties that have accrued pursuant to
21 this Consent Decree.

22 VII. COVENANT NOT TO SUE BY PLAINTIFF

23 15. Covenant Not to Sue by United States

24 a. Covenant Not to Sue by United States to
25 Settling Defendants. Except as specifically provided
26 in Paragraph 16(a) (Reservation of Rights by United
27

1 States), the United States covenants not to sue or
2 take administrative action against Settling Defendants
3 pursuant to Sections 106 and 107(a) of CERCLA, 42
4 U.S.C. §§ 9606, 9607(a), and Section 7003 of the
5 Resource, Conservation and Recovery Act ("RCRA"), 42
6 U.S.C. § 6973, with respect to the Site. This
7 covenant not to sue shall take effect upon receipt by
8 EPA of all payments required by Paragraph 4 (Payment
9 of Response Costs) and any amount due thereon under
10 Section VI, Paragraphs 9 (Interest on Late Payments)
11 and 10 (Stipulated Penalty). This covenant not to sue
12 is conditioned upon the satisfactory performance by
13 Settling Defendants, and each of them, of their
14 obligations under this Consent Decree. This covenant
15 not to sue extends only to Settling Defendants and
16 does not extend to any other person.

17 b. Covenant Not to Sue by United States to
18 Beneficiaries. Except as specifically provided in
19 Paragraph 16(c) (Reservation of Rights by United States
20 Against Beneficiaries), the United States covenants
21 not to sue or to take administrative action against
22 the Beneficiaries pursuant to Sections 106 and 107(a)
23 of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), and Section
24 7003 of the Resource, Conservation and Recovery Act
25 ("RCRA"), 42 U.S.C. § 6973, with respect to the Site.
26 With respect to present and future liability, this

27
28

1 covenant not to sue shall take effect upon receipt by
2 EPA of all payments required by Paragraph 4 (Payment
3 of Response Costs) and any amount due thereon under
4 Section VII (Failure to Comply with Consent Decree),
5 Paragraphs 9 (Interest on Late Payments) and 10
6 (Stipulated Penalty). This covenant not to sue is
7 conditioned upon the satisfactory performance by the
8 Beneficiaries of their obligations under this Consent
9 Decree. This covenant not to sue extends only to the
10 Beneficiaries and does not extend to any other person.

11 16. Reservation of Rights by United States.

12 a. Reservation of Rights by United States
13 Against Settling Defendants. The covenant not to sue
14 set forth in Paragraph 15(a) does not pertain to any
15 matters other than those expressly specified therein.
16 The United States reserves, and this Consent Decree is
17 without prejudice to, all rights against Settling
18 Defendants, with respect to all other matters,
19 including but not limited to:

- 20 i. liability for failure to meet a
21 requirement of this Consent Decree;
22 ii. liability, based upon the ownership or
23 operation of the Facility, except as provided for and
24 in compliance with the provisions of this Consent
25 Decree, or upon the transportation, treatment,
26 storage, or disposal, or the arrangement for the

27

28

1 transportation, treatment, storage, or disposal, of a
2 hazardous substance or a solid waste at or in
3 connection with the Site, after the Effective Date of
4 this Consent Decree;

5 iii. liability arising from any past,
6 present, or future arrangement for disposal, release,
7 or threat of release of a hazardous substance,
8 pollutant or contaminant outside of the Site;

9 iv. liability for damages for injury to,
10 destruction of, or loss of natural resources, and for
11 the costs of any natural resource damage assessments;
12 and

13 v. criminal liability.

14 b. Notwithstanding any other provision of this
15 Consent Decree, the United States reserves, and this
16 Consent Decree is without prejudice to, the right to
17 institute proceedings in this action or in a new
18 action, or to issue an administrative order seeking to
19 compel Settling Defendants (1) to perform response
20 actions relating to the Site or (2) to reimburse the
21 United States for additional costs of response if:

22 (i) conditions at the Site, previously
23 unknown to EPA, are discovered, or
24 (ii) information, previously unknown to EPA,
25 is received, in whole or in part,
26 and EPA determines that these previously unknown

1 conditions or information together with any other
2 relevant information indicates that the Remedial
3 Action at issue is not protective of human health or
4 the environment. For purposes of this Paragraph, the
5 information and the conditions known to EPA shall
6 include only that information and those conditions
7 known to EPA as of the date the ROD for the Remedial
8 Action at issue is signed and set forth in that ROD
9 and the administrative record supporting that ROD.

10 c. Reservation of Rights by United States
11 Against Beneficiaries. The United States reserves,
12 and this Consent Decree is without prejudice to, all
13 rights against Beneficiaries, if any, with respect to
14 all matters not expressly included within the Covenant.
15 Not to Sue by United States in Paragraph 15(b).
16 Notwithstanding any other provision of this Consent
17 Decree, the United States reserves all rights against
18 Beneficiaries with respect to:

19 i. liability for failure by Beneficiaries to
20 meet a requirement of this Consent Decree;

21 ii. criminal liability;

22 iii. liability for damages for injury to,
23 destruction of, or loss of natural resources, and for
24 the costs of any natural resource damage assessments;

25 iv. liability, based upon the ownership or
26 operation of the Site, except as provided for and in
27

1 compliance with the provisions of this Consent Decree,
2 or upon the transportation, treatment, storage, or
3 disposal, or the arrangement for the transportation,
4 treatment, storage, or disposal, of a hazardous
5 substance or a solid waste at or in connection with
6 the Site, after the Effective Date of this Consent
7 Decree;

8 v. liability arising from the past, present,
9 or future arrangement for disposal, release or threat
10 of release of a hazardous substance, pollutant, or
11 contaminant outside of the Site;

12 vi. liability for performance of response
13 action or for reimbursement of Response Costs if total
14 Response Costs incurred or to be incurred at or in
15 connection with the Site by the United States or any
16 other person exceed \$ 350 million, unless, within 90
17 (ninety) days of receipt of written notice by EPA that
18 Response Costs have exceeded \$ 350 million,
19 Beneficiaries pay to the United States \$ 347,850
20 (three hundred and forty seven thousand, eight hundred
21 and fifty dollars). Payments pursuant to this
22 Paragraph shall be made in accordance with the
23 provisions of Paragraph 4.a. Notices pursuant to this
24 Paragraph shall be given in accordance with the
25 provisions of Section XIII (Notices and Submissions).
26 The reservation in this subparagraph vi. shall be
27
28

1 deemed extinguished upon payment by Beneficiaries in
2 accordance with this subparagraph.

3 **VIII. COVENANT NOT TO SUE BY SETTLING PARTIES**

4 17. Settling Parties covenant not to sue and
5 agree not to assert any claims or causes of action
6 against the United States, or its contractors or
7 employees, with respect to Response Costs, the Site,
8 or this Consent Decree, including but not limited to:

9 a. any direct or indirect claim for
10 reimbursement from the Hazardous Substance Superfund
11 based on Sections 106(b)(2), 107, 111, 112, or 113 of
12 CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or
13 9613, or any other provision of law;

14 b. any claim arising out of response actions
15 at the Site;

16 c. any claim against the United States
17 pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C.
18 §§ 9607 and 9613, relating to Response Costs or the
19 Site;

20 d. any claim relating to the Equal Access to
21 Justice Act; and

22 e. any claim asserting a "takings" or
23 similar claim.

24 18. Settling Parties agree not to assert any
25 claims and to waive all claims or causes of action
26 that they may have for all matters relating to the
27

1 Site, including for contribution, against any person
2 where the person's liability to Settling Parties with
3 respect to the Site is based solely on having arranged
4 for disposal or treatment, or for transport for
5 disposal or treatment, of hazardous substances at the
6 Site, or having accepted for transport for disposal or
7 treatment of hazardous substances at the Site, if:

8 (a) any materials contributed by such person
9 to the Site constituting Municipal Solid Waste ("MSW")
10 or Municipal Sewage Sludge ("MSS") did not exceed 0.2%
11 of the total volume of waste at the Site; and

12 (b) any materials contributed by such person
13 to the Site containing hazardous substances, but not
14 constituting MSW or MSS, did not exceed the greater of
15 (i) 0.002% of the total volume of waste at the Site,
16 or (ii) 110 gallons of liquid materials or 200 pounds
17 of solid materials.

18 c. This waiver shall not apply to any claim
19 or cause of action against any person meeting the
20 above criteria if EPA has determined that the
21 materials contributed to the Site by such person
22 contributed or could contribute significantly to the
23 costs of response at the Site. This waiver also shall
24 not apply with respect to any defense, claim, or cause
25 of action that a Settling Party may have against any
26 person if such person asserts a claim or cause of

27

28

1 action relating to the Site against such Settling
2 Party.

3 19. Settling Parties agree not to assert any
4 claims and to waive all claims or causes of action
5 that they may have for all matters relating to the
6 Site, including for contribution, against any person
7 that has entered into a final CERCLA § 122(g) *de*
8 *minimis* settlement with EPA with respect to the Site.
9 This waiver shall not apply with respect to any
10 defense, claim, or cause of action that a Settling
11 Party may have against any person if such person
12 asserts a claim or cause of action relating to the
13 Site against such Settling Party.

14 20. Settling Parties covenant not to sue or
15 assert against any person that has entered or in the
16 future enters into a settlement agreement with EPA
17 relating to the Site, any claims or causes of action
18 seeking reimbursement or contribution for any payments
19 or obligations pursuant to this Consent Decree or any
20 Response Costs at the Site, except for cross-claims or
21 counterclaims against any such persons who are
22 asserting Site-related claims against the Settling
23 Parties.

24 21. Except as set forth in this Section, the
25 Settling Parties reserve, and this Consent Decree is
26 without prejudice to their right to assert all

27

28

1 available denials or defenses against any party in any
2 future action, lawsuit or administrative proceeding
3 brought against any of them relating in any way to the
4 Site. Nothing in this Consent Decree shall be deemed
5 to admit or imply the existence of any element of any
6 claim or of any liability of any Settling Party under
7 civil or criminal law, including without limitations,
8 all rights of action reserved by the United States
9 hereunder.

10 22. Nothing in this Consent Decree shall be
11 deemed to constitute approval or preauthorization of a
12 claim within the meaning of Section 111 of CERCLA, 42
13 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

14 **IX. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

15 23. Nothing in this Consent Decree shall be
16 construed to create any rights in, or grant any cause
17 of action to, any person not a Party to this Consent
18 Decree. Except as provided in Paragraphs 18, 19, 20
19 and 21 of this Consent Decree, each of the Parties
20 expressly reserves any and all rights (including, but
21 not limited to, any right to contribution), defenses,
22 claims, demands, and causes of action which each Party
23 may have with respect to any matter, transaction, or
24 occurrence relating in any way to the Site against any
25 person not a Party hereto.

26 24. The Parties agree, and by entering this
27
28

1 Consent Decree this Court finds, that Settling Parties
2 are entitled to protection from contribution actions
3 or claims as provided by Section 113(f)(2) of CERCLA,
4 42 U.S.C. § 9613(f)(2), including but not limited to
5 those made in *Casmalia Resources Site Steering*
6 *Committee v. Kenneth H. Hunter, Jr. et al.*, Civ. No.
7 98-0074) filed prior to the Effective Date, for
8 "matters addressed" in this Consent Decree. The
9 matters addressed in this Consent Decree are all
10 response actions taken or to be taken and all Response
11 Costs incurred or to be incurred, at or in connection
12 with the Site, by the United States or any other
13 person. The matters addressed in this Consent Decree
14 do not include those Response Costs or response
15 actions as to which the United States has reserved its
16 rights under this Consent Decree (except for claims
17 for failure to comply with this Decree), in the event
18 that the United States asserts rights against Settling
19 Parties coming within the scope of such reservations.

20 25. Each Settling Party agrees that, with respect
21 to any suit or claim for contribution brought by it
22 for matters related to this Consent Decree, it will
23 notify EPA and DOJ in writing no later than sixty (60)
24 days prior to the initiation of such suit or claim.
25 Each Settling Party also agrees that, with respect to
26 any suit or claim for contribution brought against it
27
28

1 for matters related to this Consent Decree, it will
2 notify EPA and DOJ in writing within ten (10) days of
3 service of the complaint or claim upon it. In
4 addition, each Settling Party shall notify EPA and DOJ
5 within ten (10) days of service or receipt of any
6 Motion for Summary Judgment, and within ten (10) days
7 of receipt of any order from a court setting a case
8 for trial, for matters related to this Consent Decree.

9 26. In any subsequent administrative or judicial
10 proceeding initiated by the United States for
11 injunctive relief, recovery of response costs, or
12 other relief relating to the Site, Settling Parties
13 shall not assert, and may not maintain, any defense or
14 claim based upon the principles of waiver, res
15 judicata, collateral estoppel, issue preclusion,
16 claim-splitting, or other defenses based upon any
17 contention that the claims raised by the United States
18 in the subsequent proceeding were or should have been
19 brought in the instant case; provided, however, that
20 nothing in this Paragraph affects the enforceability
21 of the Covenant Not to Sue by Plaintiff set forth in
22 Section VII.

23 **X. SITE, FFA AND PROPERTY ACCESS**

24 27.

25 a. Commencing upon the date of lodging of this
26 Consent Decree, Settling Defendants agree to provide
27

28

1 the United States, the State of California, and their
2 representatives, including EPA and its contractors and
3 any persons performing response actions at the Site
4 under EPA or State oversight, free of any charge,

5 (1) access to the Facility, the FFA and the
6 Property; and

7 (2) at the time access is requested, access
8 to any other property owned or controlled by Settling
9 Defendants to which access is determined by EPA or the
10 State to be required for the implementation of this
11 Consent Decree, or for the purpose of conducting any
12 response activity related to the Site, including but
13 not limited to:

14 1) Monitoring of investigation, removal,
15 remedial or other activities at the Site;

16 2) Verifying any data or information
17 submitted to the United States or the State;

18 3) Conducting investigations relating to
19 contamination at or near the Site;

20 4) Obtaining samples;

21 5) Assessing the need for, planning, or
22 implementing response actions at or near the Site;

23 6) Inspecting and copying records, operating
24 logs, contracts, or other documents maintained or
25 generated by Settling Defendants or their agents,
26 located on the Site, the FFA or the Property,

27
28

1 consistent with Section XI (Access to Information);

2 7) Implementing or maintaining any
3 institutional controls that may be selected by EPA;

4 8) Developing, maintaining, preserving or
5 restoring any vegetation or habitat that has been or
6 may be established; and

7 9) Assessing Settling Defendants' compliance
8 with this Consent Decree.

9 b. Prior to the lodging of this Consent Decree
10 with the Court, Casmalia Resources shall (1) grant to
11 Hunter Resources for the benefit of the United States
12 an exclusive option to purchase, or have transferred
13 to a United States designee, all or any portion of the
14 Facility, the FFA or the Property ("the Option"),
15 pursuant to the terms and conditions set forth in the
16 Option Agreement; and (2) shall record in the Official
17 Records of Santa Barbara County the executed Option
18 Agreement. The Option shall be exercisable for the
19 benefit of the United States or its designee for a
20 period of ten years after payment of the Fixed Amount
21 to the United States (the "Option Period").

22 c. The United States' option rights under the
23 Option Agreement shall be evidenced by a commitment to
24 issue a policy of title insurance obtained by Settling
25 Defendants and delivered to the United States within
26 the 30-Day Period at Settling Defendants' expense.

27

28

1 The commitment to issue a policy of title insurance
2 shall be in substantially the form attached to this
3 Consent Decree as Appendix D, and shall contain no
4 exceptions other than those set forth in the Title
5 Commitment, a copy of which is attached to this
6 Consent Decree as Appendix D.

7 d. In addition to any other requirements of this
8 Section, during any period of time that Owner Settling
9 Defendant or other of the Settling Defendants retains
10 title to the Property and/or the Facility and/or the
11 FFA, the United States and any persons performing
12 cleanup activities at the Facility and/or the Property
13 and/or the FFA, including but not limited to the
14 Casmalia Steering Committee (hereinafter "CSC"), shall
15 have, including but not limited to pursuant to the
16 Option Agreement, free of any charge, the right to
17 utilize and have access to the Property, the Facility
18 and the FFA, including but not limited to the rights
19 to: (a) access and use existing piping or other
20 facilities; (b) access and use all surface and
21 groundwater, including but not limited to the right to
22 extract water from water supply wells; (c) use or
23 borrow soil for purposes related to response actions
24 at or near the Facility, the Property and/or the FFA;
25 (d) construct fences or other barriers; (e) conduct
26 treatability, pilot or other studies, and (f) restore

1 and maintain vegetation and/or develop and maintain
2 wetland areas for habitat preservation or other
3 purposes related to response actions at or near the
4 Site. Any transfer of the Property, the Facility or
5 the FFA by Owner Settling Defendant after the
6 execution of this Consent Decree shall be subject to
7 the rights provided herein, including but not limited
8 to as reflected in the Option Agreement to be recorded
9 in connection with this Consent Decree.

10 28. In addition to any other requirements of this
11 Section, Settling Parties, to the extent they have any
12 control over the Facility, the Property and/or the
13 FFA, shall coordinate and cooperate with EPA and/or
14 its designated representatives in the implementation
15 of any institutional controls that may be selected for
16 the Site in any ROD for the Site. Owner Settling
17 Defendant shall furnish to EPA, free of any charge,
18 any portion of the Property, the Facility and/or the
19 FFA deemed by EPA to be necessary for the
20 implementation of any institutional controls that may
21 be selected in any ROD for the Site.

22 29. Notwithstanding any provision of this Consent
23 Decree, the United States retains all of its access
24 authorities and rights, including enforcement
25 authorities related thereto, under CERCLA, the
26 Resource Conservation and Recovery Act, 42 U.S.C.

27

28

1 § 6927, and any other applicable statutes or
2 regulations.

3 30. Notice of Obligations to Successors-in-Title.

4 a. Within fifteen (15) days after entry of
5 this Consent Decree, Owner Settling Defendant shall
6 record a notice of the entry of this Consent Decree
7 with the Recorder's Office, Santa Barbara County,
8 State of California. Thereafter, each deed, title, or
9 other instrument conveying an interest in the
10 Property, the Facility and/or the FFA shall contain a
11 notice stating that the Property, the Facility and the
12 FFA are subject to this Consent Decree and shall
13 reference the recorded location of the Consent Decree
14 and any restrictions applicable to the Property, the
15 Facility and the FFA under this Consent Decree.

16 b. The obligations of Owner Settling
17 Defendant or any other Settling Party with respect to
18 the provision of access under Section X (Site and
19 Property Access) and the implementation of
20 institutional controls under Section X (Site and
21 Property Access) of this Consent Decree shall be
22 binding upon any and all Settling Parties and upon any
23 and all persons who subsequently acquire any such
24 interest or portion thereof (hereinafter "Successors-
25 in-Title").

26 c. Owner Settling Defendant and any
27

28

1 Successor-in-Title shall, at least thirty (30) days
2 prior to the conveyance of any interest in the
3 Facility, the FFA or the Property, give written notice
4 of this Consent Decree to the grantee and written
5 notice to EPA of the proposed conveyance, including
6 the name and address of the grantee, and the date on
7 which notice of the Consent Decree was given to the
8 grantee. In the event of any such conveyance, the
9 Settling Defendants' obligations under this Consent
10 Decree, including their obligation to provide or
11 secure access pursuant to Section X (Site, FFA and
12 Property Access), shall continue to be met by Settling
13 Defendants. In no event shall the conveyance of an
14 interest in property that includes, or is a portion
15 of, the Facility, the Property or the FFA release or
16 otherwise affect the liability of Settling Parties or
17 any of them to comply with this Consent Decree.

18 **XI. ACCESS TO INFORMATION**

19 31. Upon notice by EPA to Settling Defendants,
20 Settling Defendants shall provide to EPA copies of all
21 non-privileged documents and information within their
22 possession or control or that of their contractors or
23 agents relating to activities at the Site or to the
24 implementation of this Consent Decree, including, but
25 not limited to, sampling, analysis, chain of custody
26 records, manifests, trucking logs, receipts, reports,

27

28

1 sample traffic routing, correspondence, or other
2 documents or information related to the Site.

3 32. Confidential Business Information and
4 Privileged Documents.

5 a. Settling Parties may assert business
6 confidentiality claims covering part or all of the
7 documents or information submitted to Plaintiff under
8 this Consent Decree to the extent permitted by and in
9 accordance with Section 104(e)(7) of CERCLA, 42 U.S.C.
10 § 9604(e)(7), and 40 C.F.R. 2.203(b). Documents or
11 information determined to be confidential by EPA will
12 be accorded the protection specified in 40 C.F.R. Part
13 2, Subpart B. If no claim of confidentiality
14 accompanies documents or information when they are
15 submitted to EPA, or if EPA has notified Settling
16 Parties that the documents or information are not
17 confidential under the standards of Section 104(e)(7)
18 of CERCLA, the public may be given access to such
19 documents or information without further notice to
20 Settling Parties.

21 b. Settling Parties may assert that certain
22 documents, records or other information not submitted
23 to EPA are privileged under the attorney-client
24 privilege or any other privilege recognized by federal
25 law. If Settling Parties assert such a privilege in
26 lieu of providing documents, they shall provide

27

28

1 Plaintiff with the following: (1) the title of the
2 document, record, or information; (2) the date of the
3 document, record, or information; (3) the name and
4 title of the author of the document, record, or
5 information; (4) the name and title of each addressee
6 and recipient; (5) a description of the subject of the
7 document, record, or information; and (6) the
8 privilege asserted. However, no documents, reports or
9 other information created or generated pursuant to the
10 requirements of this or any other consent decree with
11 the United States shall be withheld on the grounds
12 that they are privileged. If a claim of privilege
13 applies only to a portion of a document, the document
14 shall be provided to Plaintiff in redacted form to
15 mask the privileged information only. Settling
16 Parties shall retain all records and documents that
17 they claim to be privileged until the United States
18 has had a reasonable opportunity to dispute the
19 privilege claim and any such dispute has been resolved
20 in the Settling Parties' favor.

21 33. No claim of confidentiality shall be made
22 with respect to any data, including but not limited
23 to, all sampling, analytical, monitoring,
24 hydrogeologic, scientific, chemical, or engineering
25 data, or any other documents or information evidencing
26 conditions at or around the Site.

1 schedule and in accordance with procedures pre-
2 approved by EPA. If Settling Defendants select the
3 option in this Paragraph, EPA shall have unlimited and
4 unrestricted access to the documents without providing
5 prior notice to Settling Defendants throughout the
6 document retention period referred to in Paragraph 35.

7 37. After the conclusion of the document
8 retention period in Paragraph 35, all rights in the
9 documents described in Paragraphs 35 and 36 will be
10 deemed to be vested solely in EPA, and any rights of
11 Casmalia Resources, Hunter Resources or any of the
12 Settling parties will be deemed to have been
13 terminated. In the event that any additional
14 documents or records relating to the Site come into
15 the possession or control of Settling Parties after
16 the Effective Date, such documents and records shall
17 be delivered by Settling Parties to EPA pursuant to
18 Paragraphs 35 and 36, as applicable. Settling Parties
19 may assert that certain documents, records, or other
20 information are privileged under the attorney-client
21 privilege or any other privilege recognized by federal
22 law. If Settling Parties or any of them assert such a
23 privilege, they shall provide Plaintiff with the
24 following: (1) the title of the document, record, or
25 information; (2) the date of the document, record, or
26 information; (3) the name and title of the author of
27

1 the document, record, or information; (4) the name and
2 title of each addressee and recipient; (5) a
3 description of the subject of the document, record, or
4 information; and (6) the privilege asserted. However,
5 no documents, reports, or other information created or
6 generated pursuant to the requirements of this or any
7 other consent decree with the United States shall be
8 withheld on the grounds that they are privileged. If
9 a claim of privilege applies only to a portion of a
10 document, the document shall be provided to Plaintiff
11 in redacted form to mask the privileged information
12 only. Settling Parties shall retain all records and
13 documents that they claim to be privileged until the
14 United States has had a reasonable opportunity to
15 dispute the privilege claim and any such dispute has
16 been resolved in the Settling Parties' favor.

17 38. Except for costs of storage at the Site in
18 accordance with the option provided in Paragraph 36,
19 costs of such transfer or costs of storage during the
20 ten-year period shall be paid by Settling Defendants.

21 39. By signing this Consent Decree, each Settling
22 Party certifies individually that, to the best of its
23 knowledge and belief, it has:

24 a. conducted a thorough, comprehensive, good
25 faith search for documents, or will through transfer
26 of possession and control of the documents as provided
27

1 in Paragraph 36 of this Consent Decree, and has fully
2 and accurately disclosed to EPA, all information
3 currently in its possession, or in the possession of
4 its officers, directors, employees, contractors or
5 agents, which relates in any way to the ownership,
6 operation or control of the Site, or to the ownership,
7 possession, generation, treatment, transportation,
8 storage or disposal of a hazardous substance,
9 pollutant or contaminant at or in connection with the
10 Site;

11 b. not altered, mutilated, discarded,
12 destroyed or otherwise disposed of any records,
13 documents or other information relating to its
14 potential liability regarding the Site, and

15 c. fully complied with any and all EPA
16 requests for information regarding the Site pursuant
17 to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C.
18 §§ 9604(e) and 9622 and Section 3007 of RCRA, 42
19 U.S.C. § 6927.

20 **XIII. NOTICES AND SUBMISSIONS**

21 40. Whenever, under the terms of this Consent Decree,
22 notice is required to be given or a document is
23 required to be sent by one party to another, it shall
24 be directed to the individuals at the addresses
25 specified below, unless those individuals or their
26 successors give notice of a change to the other

27

28

1 Parties in writing. Written notice as specified
2 herein shall constitute complete satisfaction of any
3 written notice requirement of the Consent Decree with
4 respect to the United States, EPA, DOJ, and Settling
5 Parties, respectively.

6 As to the United States:

7 As to DOJ:

8 Chief, Environmental Enforcement Section
9 Environment and Natural Resources Division
10 U.S. Department of Justice (DJ #90-7-1-611D)
11 P.O. Box 7611
12 Washington, D.C. 20044-7611

13 As to EPA:

14 Marie Rongone,
15 Senior Counsel
16 Office of Regional Counsel, ORC-3
17 75 Hawthorne St.
18 San Francisco, CA 94105

19 As to Settling Parties:

20 Howard Coleman or Casmalia Attorney
21 Nossaman, Guthner, Knox & Elliott, LLP
22 445 S. Figueroa Street, 31st floor
23 Los Angeles, CA 90071-1602

24 **XIV. RETENTION OF JURISDICTION**

25 41. This Court shall retain jurisdiction over
26 this matter for the purpose of interpreting and
27 enforcing the terms of this Consent Decree.

28 **XV. INTEGRATION/APPENDICES**

42. This Consent Decree and its appendices
constitute the final, complete and exclusive agreement
and understanding among the Parties with respect to

1 the settlement embodied in this Consent Decree. The
2 Parties acknowledge that there are no representations,
3 agreements or understandings relating to the
4 settlement other than those expressly contained in
5 this Consent Decree.

6 43. The following appendices are attached to and
7 incorporated into this Consent Decree: Appendix A is
8 the legal description and a map of the Property.
9 Appendix B is a map of the Facility. Appendix C is
10 the legal description and a map of the FFA. Appendix
11 D is a copy of the Title Commitment. Appendix E the
12 payment instructions for payments required by the
13 Consent Decree. Appendix F is a Payment Invoice Form
14 for payments required by this Consent Decree.
15 Appendix G is the Escrow Agency Agreement. Appendix H
16 is the Option Agreement. Appendix I is the Lease.

17 **XVI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

18 44. This Consent Decree shall be lodged with the
19 Court for a period of not less than thirty (30) days
20 for public notice and comment. The United States
21 hereby gives notice of the right to a public hearing
22 in the affected area. The United States reserves the
23 right to withdraw or withhold its consent if the
24 comments regarding the Consent Decree disclose facts
25 or considerations which indicate that this Consent
26 Decree is inappropriate, improper, or inadequate.

27
28

1 Settling Parties consent to the entry of this Consent
2 Decree without further notice.

3 45. If for any reason this Court should decline
4 to approve this Consent Decree in the form presented,
5 this Consent Decree is voidable at the sole discretion
6 of any Party and the terms of this Consent Decree may
7 not be used as evidence in any litigation between the
8 Parties.

9 **XVII. EFFECTIVE DATE**

10 46. The effective date of this Consent Decree
11 shall be the date upon which it is entered by the
12 Court.

13 **XVIII. SIGNATORIES/SERVICE**

14 47. Each undersigned Settling Party or
15 representative of a Settling Party to this Consent
16 Decree and the Assistant Attorney General for the
17 Environment and Natural Resources Division of the
18 United States Department of Justice certifies that he
19 or she is authorized to enter into the terms and
20 conditions of this Consent Decree and to execute and
21 bind legally such Party to this document.

22 48. Each Party other than the United States
23 hereby agrees not to oppose entry of this Consent
24 Decree by this Court or to challenge any provision of
25 this Consent Decree, unless the United States has
26 notified the other Settling Parties in writing that it

27
28

1 no longer supports entry of the Consent Decree.
2 49. Each Party other than the United States shall
3 identify, on the attached signature page, the name and
4 address of an agent who is authorized to accept
5 service of process by mail on behalf of that Party
6 with respect to all matters arising under or relating
7 to this Consent Decree. Such Settling Parties hereby
8 agree to accept service in that manner
9 and to waive the formal service requirements set forth
10 in Rule 4 of the Federal Rules of Civil Procedure and
11 any applicable local rules of this Court, including
12 but not limited to, service of a summons.

13

14

15

SO ORDERED THIS 22d DAY OF November,

16

2009.

17

18

Christina A. Smith
United States District Court
Judge

19

20

21

22

23

24

25

26

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

THE UNDERSIGNED PARTIES enter into this Consent Decree in the
matter of United States v. Kenneth H. Hunter, Jr., et al., Case
No. CV 97-9449 (JGx), CV 8-0074 WDK (RNBx) (Consolidated),
relating to the Casmalia Resources Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date: 1.31.02

Tom Sansonetti
THOMAS L. SANSONETTI
Assistant Attorney General
Environment and Natural
Resources Division
U.S. Department of Justice
Washington, D.C. 20530


JOHN S. GORDON
Acting United States Attorney
1200 United States Courthouse
213 North Spring Street
Los Angeles, CA 90012

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

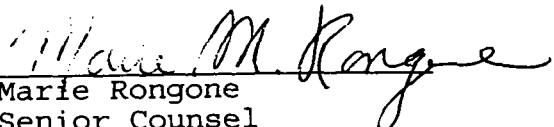


BRADLEY O'BRIEN
Attorney
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



Jane Diamond, Acting
Superfund Division Director,
U.S. Environmental Protection
Agency, Region 9
75 Hawthorne St.
San Francisco, CA 94105



Marie Rongone
Senior Counsel
U.S. Environmental Protection
Agency
75 Hawthorne St.
San Francisco, CA 94105

1 THE UNDERSIGNED PARTY enters into this Consent Decree
2 in the matter of United States v. Kenneth H. Hunter,
3 Jr., et al., Case No. CV 97-9449 (JGx), CV 8-0074 WDK
4 (RNBx) (Consolidated), relating to the Casmalia
5 Resources Superfund Site.

6 CASMALIA RESOURCES
7 559 San Ysidro Road
8 Santa Barbara, CA 93108

9 By: Hunter Resources, its General Partner

10 By: Kenneth H. Hunter, III

11 Agent Authorized to Accept Service on Behalf of Above-signed Party:

12 Name: Howard D. Coleman

13 Title: Nossaman, Guthner, Knox & Elliott

14 Address: 445 S. Figueroa Street, Los Angeles, CA 90071

15 HUNTER RESOURCES

16 By: Kenneth H. Hunter, III
17 Kenneth H. Hunter, III
18 1621 Refugio Road
19 Santa Ynez, CA 93460

20 THE HUNTER LIVING TRUST

21 By: Kenneth H. Hunter, III
22 Trustee

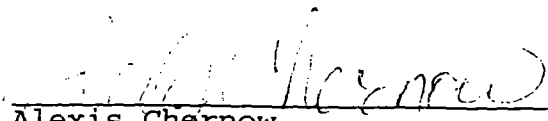
23 Agent Authorized to Accept Service on Behalf of Above-signed Party:

24 Name: Howard D. Coleman

25 Title: Nossaman, Guthner, Knox & Elliott

26 Address: 445 S. Figueroa Street, Los Angeles, CA 90071

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28


Alexis Chernow
2009 Washington Street
Santa Monica, CA 90403

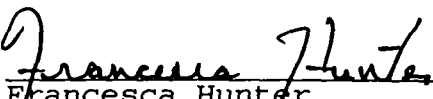
Francesca Hunter
2793 Sycamore Canyon Road
Santa Barbara, CA 93108

Agent Authorized to Accept Service on Behalf of Above-
signed Parties:

Howard D. Coleman
Nossaman, Guthner, Knox & Elliott
445 South Figueroa Street, 31st Floor
Los Angeles, CA 90071

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

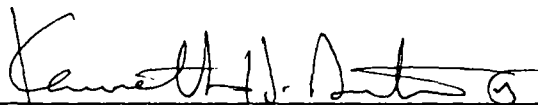
Alexis Chernow
2009 Washington Street
Santa Monica, CA 90403



Francesca Hunter
2793 Sycamore Canyon Road
Santa Barbara, CA 93108

Agent Authorized to Accept Service on Behalf of Above-
signed Parties:

Howard D. Coleman
Nossaman, Guthner, Knox & Elliott
445 South Figueroa Street, 31st Floor
Los Angeles, CA 90071



Kenneth H. Hunter, III
1621 Refugio Road
San Ynez, CA 93460

Agent Authorized to Accept Service on Behalf of Above-
signed Party:

Howard D. Coleman
Nossaman, Guthner, Knox & Elliott
445 South Figueroa Street, 31st Floor
Los Angeles, CA 90071

Nancy Hunter
170 Coronada Circle
Santa Barbara, CA 93108

Agent Authorized to Accept Service on Behalf of Above-
signed Party:

Sally Hunter
1103 Rosewalk Way
Pasadena, CA 91103

Katherine Kramer
2990 Lucky Lane
Santa Ynez, CA 93460

Agent Authorized to Accept Service on Behalf of Above-
signed Parties:

Howard D. Coleman
Nossaman, Guthner, Knox & Elliott
445 South Figueroa Street, 31st Floor
Los Angeles, CA 90071

Kenneth H. Hunter, III
1621 Refugio Road
San Ynez, CA 93460

Agent Authorized to Accept Service on Behalf of Above-
signed Party:

Howard D. Coleman
Nossaman, Guthner, Knox & Elliott
445 South Figueroa Street, 31st Floor
Los Angeles, CA 90071

Nancy Hunter
Nancy Hunter
170 Coronada Circle
Santa Barbara, CA 93108

Agent Authorized to Accept Service on Behalf of Above-
signed Party:

SCOTT WILLIAMS
WORDEN, WILLIAMS, RICHMOND et al
462 STEVENS AVE, SUITE 102
SOLANA BEACH, CA 92075

Sally Hunter
1103 Rosewalk Way
Pasadena, CA 91103

Katherine Kramer
2990 Lucky Lane
Santa Ynez, CA 93460

Agent Authorized to Accept Service on Behalf of Above-
signed Parties:

Howard D. Coleman
Nossaman, Guthner, Knox & Elliott
445 South Figueroa Street, 31st Floor
Los Angeles, CA 90071

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

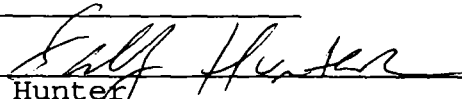
Kenneth H. Hunter, III
1621 Refugio Road
San Ynez, CA 93460

Agent Authorized to Accept Service on Behalf of Above-
signed Party:

Howard D. Coleman
Nossaman, Guthner, Knox & Elliott
445 South Figueroa Street, 31st Floor
Los Angeles, CA 90071

Nancy Hunter
170 Coronada Circle
Santa Barbara, CA 93108

Agent Authorized to Accept Service on Behalf of Above-
signed Party:


Sally Hunter
1103 Rosewalk Way
Pasadena, CA 91103

Katherine Kramer
2990 Lucky Lane
Santa Ynez, CA 93460

Agent Authorized to Accept Service on Behalf of Above-
signed Parties:

Howard D. Coleman
Nossaman, Guthner, Knox & Elliott
445 South Figueroa Street, 31st Floor
Los Angeles, CA 90071

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Kenneth H. Hunter, III
1621 Refugio Road
San Ynez, CA 93460

Agent Authorized to Accept Service on Behalf of Above-
signed Party:

Howard D. Coleman
Nossaman, Guthner, Knox & Elliott
445 South Figueroa Street, 31st Floor
Los Angeles, CA 90071

Nancy Hunter
170 Coronada Circle
Santa Barbara, CA 93108

Agent Authorized to Accept Service on Behalf of Above-
signed Party:

Sally Hunter
1103 Rosewalk Way
Pasadena, CA 91103

Katherine Kramer
Katherine Kramer
2990 Lucky Lane
Santa Ynez, CA 93460

Agent Authorized to Accept Service on Behalf of Above-
signed Parties:

Howard D. Coleman
Nossaman, Guthner, Knox & Elliott
445 South Figueroa Street, 31st Floor
Los Angeles, CA 90071